

No. 48.

AMENDATORY BILL.

MARCH 9, 1808.

Ordered to be printed as amended.

A Bill,

‘Concerning courts martial and courts of inquiry.



1 Sec. 1. *BE it enacted by the senate and house of representatives*
2 *of the United States of America, in congress assembled, That in*
3 every case where the attendance of any person, not in the military
4 or naval service of the United States, shall be necessary as a wit-
5 ness before a military or naval court martial, or court of inquiry,
6 and who shall not reside at a greater distance than one hundred
7 miles from the place where the court martial or court of inquiry
8 shall be holden, a summons may be issued out of any court of the
9 United States, and the clerk of any such court shall be, and he is
10 hereby authorized and required, upon due application in writing by
11 the judge advocate, or party officiating as such, or by the party ac-
12 cused, to issue such summons, requiring such witness to appear,
13 and give evidence before such court martial or court of inquiry.

14 and upon good and sufficient cause shewn verified by affidavit be-
 15 fore any judge of any court of the United States, and the same
 16 being certified by such judge, and produced to the clerk to whom
 17 application as aforesaid shall be made for any summons, the said
 18 witness in such summons may be farther directed and required to
 19 exhibit in evidence before such court martial or court of inquiry,
 20 any public paper, document or record in his possession, power or
 21 controul; which said paper, document or record shall be specified
 22 in such affidavit and certificate, and described in such summons,
 23 and in the opinion of the judge shall contain evidence pertinent to
 24 the issue or subject matter which may be on trial before such court,
 25 and which said witness might be compelled to produce by the or-
 26 dinary rules of proceeding in a court of civil jurisdiction, and in
 27 every summons to be issued in virtue of this act, some certain day
 28 shall be appointed for the same to be returned to the proper court
 29 martial or court of inquiry, and for the appearance of the witness.
 30 And every summons as aforesaid shall be directed to the marshal
 31 of the district, or officer acting as such, in which such witness may
 32 reside or may happen to be, and for every fault in not duly serving
 33 and returning any summons as aforesaid, the marshal, or officer
 34 acting as such, shall be liable to the same penalties, and to be pro-
 35 ceeded against in like manner, as if he had made such default in not
 36 serving or returning any summons or citation in causes depending
 37 in the district court of the United States holden in the district or
 38 territory whereof he may be marshal, or acting as such.

1 Sec. 2. *And be it further enacted,* That if any person, duly sum-
 2 moned as a witness in pursuance of this act, shall fail to appear and

3 give evidence before such court martial or court of inquiry, accord-
4 ing to the tenor of the summons, or shall, in any respect, wilfully
5 disobey any summons duly issued and served, in pursuance of this
6 act, or having appeared in obedience to any summons, shall depart
7 without leave of the court before his examination shall have been
8 definitively taken down in writing, subscribed and concluded, every
9 such person shall be liable to the same penalties and to be proceeded
10 against in like manner before any court of the United States, hol-
11 den for the district or territory where he resided or may have been
12 found at the time of being summoned, as is provided by law in ca-
13 ses of default by any witness, summoned in civil causes pending in
14 the courts of the state or territory wherein such witness may reside
15 as aforesaid, or may have been found and summoned as aforesaid;
16 and the return of the marshal certifying the service of such sum-
17 mons, and the certificate on oath of the president of any such court
18 martial or court of inquiry, and of the judge advocate or person offi-
19 ciating as such, stating in what respect such summons may have
20 been neglected or disobeyed, which certificate shall have been en-
21 tered and recorded in the proceedings of such court martial at the
22 time of such neglect or disobedience, shall be admitted as evidence
23 of such default in such witness, as aforesaid: *Provided never-*
24 *theless,* That in case such witness shall satisfy the court before
25 whom such proceeding against such witness shall be had as afore-
26 said, that the default imputed to him was produced by sickness or
27 other inevitable impediment, and was not an act of contempt or wil-
28 ful disobedience, such witness shall be forthwith discharged from
29 any farther proceedings thereupon in said court.

1 Sec. 3. *And be it further enacted,* That depositions taken before
2 a judge of any court of the United States, or before a judge of any
3 circuit or district court, court of chancery, common pleas, errors,
4 or appeals, or any superior or supreme court of a state or territory,
5 where the deponent or deponents shall reside, or may happen to be,
6 or before any three or more of five commissioners, to be appointed
7 and commissioned by a judge of any court of the United States, or
8 territories thereof, may be read in evidence before any such court
9 martial or court of inquiry, in relation to any charge where the pun-
10 ishment, upon a definitive sentence of conviction, may not extend to
11 life, nor to the cashiering or dismissal of a commissioned officer,
12 and in any case where the prosecutor or judge advocate and the party
13 accused, shall have consented in writing to the taking such deposi-
14 tion; and summons shall issue for witnesses, before every such
15 judge or such commissioners, for the purpose of giving their depo-
16 sitions, and producing papers, documents and records, in like man-
17 ner as is herein before prescribed for summoning witnesses before
18 courts martial and courts of inquiry : *Provided,* That the place ap-
19 pointed for taking such deposition be within the county where the
20 witness may reside, or may happen to be found at the time of
21 being summoned : *And provided also,* That no such deposition shall
22 be read in evidence, unless reasonable notice of the time and place
23 of taking the same be given to the adverse party, by the party at
24 whose instance the same may be taken, nor unless the witness shall
25 be, and reside, as well at the time of taking the deposition, as of offer-
26 ing the same in evidence, at a greater distance than twenty-five miles
27 from the place of holding such court martial or court of inquiry, or

28 the same shall have been taken by consent of parties as aforesaid ;
 29 nor if the same be taken before commissioners as aforesaid, unless the
 30 party at whose instance such commission may be issued, shall have
 31 given reasonable notice to the adverse party, of the time and place of
 32 applying for such commission, and of the name and residence of the
 33 judge to whom such application may be made ; nor unless such
 34 commission be duly issued under the hand and seal of such judge,
 35 and attested and countersigned by the clerk of the court to which
 36 such judge may belong, with the seal of the court annexed. And
 37 the probate or certificate annexed to all such depositions by the ter-
 38 ritorial or state judge, before whom the same may be taken, may be
 39 authenticated as to its being verily the act of such judge, and as to
 40 the authority of such judge, by the certificate of the clerk, under the
 41 seal of that court to which such judge may belong.

1 Sec. 4. *And be it further enacted*, That in all cases where the wit-
 2 ness, whose testimony is required, shall reside at a greater distance
 3 than one hundred miles from the place where such court martial or
 4 court of inquiry may be holden, the deposition of such witness,
 5 taken in the manner prescribed, and agreeable to the directions con-
 6 tained in the third section of this act, may be read in evidence be-
 7 fore such court martial or court of inquiry.

1 Sec. 5. *And be it further enacted*, That every person attending as
 2 a witness in obedience to any summons issued under this act, shall
 3 be entitled to the same compensation, and be privileged from arrest,
 4 in like manner as witnesses duly summoned before a circuit court
 5 of the United States.